REMARKS

Claims 4 and 5 have been canceled, without prejudice, and new claim 9 has been added, so claims 1-3 and 6-9 are pending. Claim 1 has been amended. The amendments and additions to the claims do not present new matter.

Claims 1, 2 and 4-7 were rejected under U.S.C. § 102(e) as anticipated by Breed, U.S. Patent No. 6,805,404 ("Breed").

To reject a claim under 35 U.S.C. §102(e), the Office must demonstrate that each and every claim feature is identically disclosed in a single prior art reference. *See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). The identical invention must be shown in as complete detail as is contained in the claim. M.P.E.P. §2131.

Independent claim 1, as amended, recites a system for classifying occupants of a vehicle that includes, *inter alia*, a processor coupled to the sound-wave receiver and to the sound-wave transmitter, the processor configured to determine a relative deformation of the seat by calculating a propagation time of the sound-wave between transmission from the sound-wave transmitter and reception at the sound-wave receiver. It is submitted that Breed does not disclose (or even suggest) a system for classifying occupants of a vehicle that includes such a feature.

In contrast, Breed refers to determining the location of the head of a seat occupant by directing ultrasonic waves at the head of the occupant and receiving the reflected waves. This procedure is followed by a pattern recognition process. Breed, col. 11, line 48 – col. 12, line 34. While this process may give an indication as to the location of the head of the occupant, it has nothing to do with the claimed process in which a relative deformation of a seat can be determined by how far sound-waves travel through the seat between a transmitter and a receiver. See specification, page 5, lines 1-10.

It is accordingly submitted that Breed does not anticipate the subject matter of claim 1 or its dependent claims 2, 6 and 7 (claims 4 and 5 having been canceled, without prejudice, herein), which are therefore patentable over Breed.

Claim 3 has been rejected under 35 U.S.C. § 103(a) as unpatentable over Breed in view of U.S. Patent No. 5,439,249 to Steffens et al. ("Steffens").

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a prima facie case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria

must be satisfied. First, there must be some suggestion or motivation to modify or combine the reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. *In re Merck & Co.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 3 depends from and incorporates the features of claim 1. The Steffens reference fails to cure the deficiencies of the primary Breed reference with respect to independent claim 1 because Steffens also merely describes an occupant sensor in which a pulse is detected upon reflection from an occupant (see Steffens, col. 4, lines 27-35) and Steffens does not in any way disclose or suggest determining a relative deformation of the seat by calculating a propagation time of the sound-wave between transmission from the sound-wave transmitter and reception at the sound-wave receiver.

It is accordingly submitted that the combination of Breed and Steffens does not render obvious the subject matter of claim 3, which is therefore patentable over the cited references.

Claim 8 has been rejected under 35 U.S.C. § 103(a) as unpatentable over Breed. Claim 8 depends from claim 1. As discussed above, the Breed reference does not disclose or suggest each of the features of independent claim 1, and therefore, *a fortiori*, Breed also does not disclose or suggest each of the features of claim 8, which incorporates the features of claim 1. Accordingly, it is submitted that claim 8 is patentable over the Breed reference.

New claim 9 is equally patentable over the references relied upon above because none of these references, taken alone or combined, disclose or suggest the feature of a processor coupled to the sound-wave receiver and to the sound-wave transmitter, the processor configured to determine a relative ageing of the sound-wave receiver by calculating at least one of a shift in frequency and a change in amplitude of a maximum signal.

CONCLUSION

In light of the foregoing, Applicants respectfully submit that all of the pending claims 1-3 and 6-9 are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,

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